United Nations E/C.12/UKR/CO/6

Economic and Social Council

Distr.: General
13 June 2014

Original: English

Committee on Economic, Social and Cultural Rights

Concluding observations on the sixth periodic report of Ukraine*

1. The Committee on Economic, Social and Cultural Rights considered the sixth periodic report of Ukraine on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/UKR/6) at its 3rd and 4th meetings, held on 29 April 2014 (E/C.12/2013/SR.3 and 4), and adopted, at its 40th meeting, held on 23 May 2014, the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the sixth periodic report of Ukraine (E/C.12/UKR/6). The Committee expresses its appreciation for the detailed written replies to the list of issues (E/C.12/UKR/Q/6/Add.1) as well as the open and constructive dialogue with the State party's high-level interministerial delegation.

B. Positive aspects

3. The Committee welcomes the State party's ratification of, or accession to, various human rights instruments since the last dialogue in 2007:

(a) Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 4 February 2010;

(b) International Labour Organization (ILO) Convention No. 155 (1981) concerning Occupational Safety and Health, on 4 January 2012;

(c) ILO Conventions No. 176 (1995) concerning Safety and Health in Mines and No. 174 (1993) concerning the Prevention of Major Industrial Accidents, on 15 June 2011;

(d) The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, on 25 March 2013;

* Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

GE.14-04920 (E)

1404920

Please recycle

(e) The Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (MEDICRIME Convention), on 20 August 2012;

(f) The United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions, on 10 March 2010.

4. The Committee takes note with appreciation of the State party's efforts to promote economic, social and cultural rights, including:

(a) The significant decline in the mother-to-child HIV transmission rate from 27.5 per cent in 2000 to 6.8 per cent in 2009;

(b) The adoption of the National Strategic Action Plan for HIV prevention among children and youth at risk of and vulnerable to HIV, care and support for children and youth affected by HIV/AIDS, in May 2010;

(c) The adoption of the Act on Social Dialogue in Ukraine, in December 2010;

(d) The adoption of the Act on Combating Trafficking in Human Beings, in October 2011, and of the State Targeted Social Programme on Combating Trafficking in Human Beings for the period up to 2015, in March 2012.

C. Principal subjects of concern and recommendations

Obligations of the State party under the Covenant in the context of the economic crisis

5. The Committee takes note of the State party's current fragile political and economic situation, which negatively impacts on the enjoyment of economic, social and cultural rights. The Committee expresses its concern about the adverse impact that various measures adopted in response to the economic crisis and in order to comply with the conditions for provision of international financial assistance negotiated with the International Monetary Fund have on the enjoyment by the population of their rights under the Covenant (art. 2, para. 1).

The Committee reminds the State party of its obligation under the Covenant to respect, protect and fulfil economic, social and cultural rights progressively, to the maximum of its available resources. While acknowledging that certain adjustments are at times inevitable, the Committee draws the State party's attention to its open letter on economic, social and cultural rights and austerity measures during the economic and financial crisis, dated 16 May 2012, which outlines the requirements that must be met by any proposed policy change or adjustment by States parties in reaction to the economic crisis. The State party should also ensure that any measures adopted with a view to stabilizing the current economic situation do not disproportionately affect the most disadvantaged and marginalized individuals and groups and do not lead to a lowering of the existing social protection standards below the minimum core content. The State party should further ensure that its obligations under the Covenant are duly taken into account when negotiating financial assistance projects and programmes, including with international financial institutions such as the International Monetary Fund.

Combating corruption

6. The Committee is concerned about the extent of corruption in the State party and its adverse impact on the enjoyment of all human rights, including economic, social and cultural rights protected under the Covenant (art. 2, para. 1).

The State party should, as a matter of priority, address the root causes of corruption and adopt all necessary legislative and policy measures to combat corruption and related impunity effectively and to ensure that public affairs are conducted, in law and in practice, in a transparent manner. The State party should also ensure that politicians, members of parliament and national and local government officials are aware of the economic and social costs of corruption, and that judges, prosecutors and the police are aware of the need for strict enforcement of the law.

Anti-discrimination legal framework

7. The Committee is concerned that the 2012 Act on the principles of preventing and combating discrimination in Ukraine does not: (a) explicitly include all the prohibited grounds for discrimination listed in article 2, paragraph 2, of the Covenant; (b) provide for a definition of direct and indirect discrimination consistent with article 2, paragraph 2, of the Covenant; (c) provide for a reversal of the burden of proof in civil proceedings; or (d) provide for sufficient remedies for victims of discrimination, which are limited to compensation for material and moral damage. The Committee notes that amendments aimed at addressing the shortcomings in the current anti-discrimination legislative framework are currently under discussion in parliament (art. 2, para. 2).

The State party should expedite the adoption of amendments to its anti-discrimination legislation in order to ensure adequate protection against discrimination in line with article 2, paragraph 2, of the Covenant, also taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, inter alia by:

(a) Explicitly including all the prohibited grounds for discrimination listed in article 2, paragraph 2, of the Covenant in its comprehensive anti-discrimination law;

(b) Bringing the definitions of direct and indirect discrimination into line with the State party's obligations under the Covenant;

(c) Prohibiting discrimination in both public and private spheres;

(d) Providing for a reversal of the burden of proof in civil proceedings;

(e) Adding provisions for access to redress in cases of discrimination, including through judicial and administrative procedures, and providing for effective and appropriate remedies for victims of discrimination.

Discrimination against Roma

8. The Committee remains concerned about the lack of progress in addressing the social exclusion of, and discrimination against, Roma in the enjoyment of their rights under the Covenant, and notes with concern that lack of personal documents further exacerbates such discrimination. While welcoming the adoption in 2013 of the Strategy for the Protection and Integration of the Roma national minority into Ukrainian society up to 2020 and the National Action Plan on its implementation, the Committee is concerned about the

lack of indicators to assess progress in implementing the Strategy and the Action Plan nationwide and the insufficient budget allocations for their effective implementation. The Committee further notes that the lack of updated data on Roma and their situation represents another significant obstacle in assessing the impact of different measures aimed at combating discrimination against Roma (art. 2, para. 2).

With reference to its previous recommendations (E/C.12/UKR/CO/5, paras. 11 and 34), the Committee requests the State party to step up its efforts to combat discrimination against Roma with a view to giving full effect to their Covenant rights in practice and, to that end, to:

(a) Collect statistical data, on the basis of voluntary self-identification, on the number of Roma living in the country and on their situation in the areas of employment, social security, housing, health care and education, with a view to formulating, implementing and monitoring targeted and coordinated programmes and policies at the national and regional levels aimed at improving their socioeconomic situation;

(b) Simplify procedures and remove existing obstacles to ensure that all Roma are provided with personal documents, including birth certificates, which are necessary for the enjoyment of their rights under the Covenant;

(c) Ensure that the Action Plan on Roma Inclusion contains specific measures aimed at addressing the problems faced by Roma in accessing employment, social security, housing, health care and education;

(d) Establish quantitative and qualitative indicators to monitor the implementation of the Action Plan nationwide and provide adequate financial resources for its effective implementation.

Discrimination against Crimean Tatars

9. The Committee remains concerned that, despite the measures taken to ensure the reintegration of Crimean Tatars into society and the progress made, Crimean Tatars continue to be discriminated against and face difficulties in the enjoyment of their rights under the Covenant (art. 2, para. 2).

The State party should take measures to further improve the situation of Crimean Tatars and ensure their de facto access to employment, housing, health care, social services and education.

Discrimination on the grounds of sexual orientation and gender identity

10. The Committee is concerned about discrimination on the grounds of sexual orientation and gender identity in employment, social security, health care and education and regrets the lack of information on measures taken to combat and prevent such discrimination (art. 2, para. 2).

The State party should take all the necessary measures to combat and prevent discrimination against lesbian, gay, bisexual and transgender (LGBT) persons and ensure enjoyment of their Covenant rights on an equal basis with others.

Gender pay gap

11. The Committee remains concerned about the persistent and significant pay gap between women and men, which stands on average at around 30 per cent, despite the steps taken to promote equality between men and women. The Committee notes that the root causes of the problem lie in entrenched gender role stereotypes in the family and society at large (art. 3).

The Committee recommends that the State party, taking into account the Committee's general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights:

(a) Take steps to eliminate the persistent gender pay gap by combating vertical and horizontal segregation in employment, which result in women occupying lower paid jobs and facing obstacles in the enjoyment of career opportunities on an equal footing with men;

(b) Take measures to change society's perception of gender roles, including through awareness-raising campaigns on shared family responsibilities for men and women and on equal career opportunities as a result of education and training in fields other than those traditionally dominated by either sex.

Unemployment

12. The Committee is concerned that, despite the measures taken to combat unemployment, young people continue to be disproportionately affected by unemployment. The Committee is also concerned that the 4 per cent quota for the employment of persons with disabilities in public and private companies and institutions is having a limited impact owing to the lack of compliance by employers. The Committee is further concerned that Roma and Crimean Tatars continue to face difficulties in access to employment (art. 6).

The Committee recommends that the State party step up its efforts to further reduce unemployment, in particular unemployment among young people, persons with disabilities, Roma and Crimean Tatars, including by:

(a) Maintaining the incentives for employers who create new jobs for individuals who have been unemployed for at least two years, including persons who have difficulty competing on the job market, and ensuring that individuals so employed retain their jobs when such incentives are no longer offered;

(b) Reviewing the vocational education and training system to ensure it reflects the current labour market demands;

(c) Taking targeted measures specifically aimed at reducing youth unemployment;

(d) Ensuring effective compliance by public and private companies and institutions with the 4 per cent quota for the employment of persons with disabilities, including by providing for dissuasive sanctions for employers in case of non-compliance;

(e) Ensuring that Roma and Crimean Tatars enjoy equality of opportunity and treatment in employment and providing them with sustainable income-generating opportunities, including by enhancing their skills training.

Employment in the informal economy

13. The Committee notes with concern that 4.6 million persons, or 22.9 per cent of the total employed population, were employed in the informal sector in 2010, and were therefore not covered by the labour legislation or the social protection system (arts. 6, 7 and 9).

The Committee recommends that the State party take all appropriate measures to progressively reduce the level of informal employment and to increase the access of persons employed in the informal economy to basic services, social protection and other Covenant rights. The Committee also recommends that the State party systematically include the informal sector in the operations of the labour inspection services, address regulatory obstacles to job creation in the formal economy, and raise public awareness of the fact that labour rights and social protection apply in the informal economy.

Wage arrears

14. The Committee notes with concern that the non-payment of wages is still a problem in the State party, with wage arrears amounting to Hrv 998 million as at 1 March 2014 (arts. 6 and 7).

The State party should step up measures to address the problem of wage arrears, including by:

(a) Ensuring the effective monitoring of the payment of wages;

(b) Providing for appropriate and dissuasive sanctions in case of violations;

(c) Ensuring that a wage guarantee institution is in place in order for workers to secure payment of their wages when such payment cannot be made by the employer owing to insolvency;

(d) Ensuring that mechanisms of redress provide for not only the full payment of the overdue amounts, but also fair compensation for the losses incurred on account of delayed payment.

Social security

15. The Committee commends the State party for establishing the concept of State social standards comprising the minimum wage, the minimum pension and the subsistence level, and for regularly increasing the relevant amounts. However, the Committee is concerned that the levels of the minimum wage, unemployment benefit and minimum pension are still not sufficient to provide workers, unemployed persons and pensioners with a decent living for themselves and their families (arts. 7, 9 and 11).

The State party should take measures to progressively bring its State social standards into line with its core obligations under articles 7, 9 and 11 of the Covenant and progressively increase the relevant amounts.

Health insurance system

16. While noting that the possibility of establishing a mandatory national health insurance system has been under consideration, the Committee is concerned about the lack of progress in that area (arts. 9 and 12).

The State party should expedite the process of establishing a mandatory national health insurance system in the context of ensuring a sustainable public social security system. The existence of such a system should not prejudice the maintenance of guaranteed universal health care services provided free of charge.

Poverty

17. The Committee notes with concern that, despite the measures taken to alleviate poverty, the relative poverty level has remained comparably stable at 24.7 per cent in the first nine months of 2013. The Committee is also concerned at the high poverty rates among the most disadvantaged and marginalized individuals and groups, including Roma, Crimean Tatars, families with three or more children, some under the age of 3, families with unemployed members, persons with disabilities, households comprised of retired persons, single-parent households, and immigrant families. The Committee is further concerned that the poverty rate in rural areas is 1.7 times higher than in urban areas and that the poverty level among employed people was 20.7 per cent in the first nine months of 2013, indicating that employment in itself is not sufficient to ensure an adequate standard of living (arts. 9 and 11).

The Committee draws the State party's attention to its statement concerning poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10). The Committee recommends that the State party strengthen its efforts to combat poverty, focusing particularly on the most disadvantaged and marginalized individuals and groups and on reducing the disparities between rural and urban areas. The State party should guarantee that its social assistance system targets the poor effectively. It should also ensure that adequate financial resources are allocated for the effective implementation of poverty reduction programmes and that the programmes are adjusted accordingly when measures taken do not achieve the expected positive impact.

Right to adequate housing and right to food

18. The Committee remains concerned that the majority of Roma continue to live in substandard housing conditions without safe drinking water or sanitation facilities, electricity, heating, sewage, waste disposal or legal security of tenure, which exposes them to the risk of eviction. The Committee also notes with concern the poor housing conditions and food provision in temporary accommodation centres for asylum seekers and the insufficient number of places in such centres (arts. 2, para. 2, and 11).

The State party should, taking into account the Committee's general comment no. 4 (1991) on the right to adequate housing, adopt all appropriate measures to ensure access to adequate housing for Roma, inter alia by ensuring that adequate resources are allocated to increase the supply of social housing units and by providing appropriate forms of financial support, such as rental subsidies. The Committee also recommends that the State party take steps to ensure that Roma communities are consulted throughout eviction procedures, afforded due process guarantees and provided with alternative accommodation or compensation enabling them to acquire adequate accommodation, and that the State party take into account the Committee's general comment no. 7 (1997) on forced evictions. The Committee further recommends that the State party take effective measures to secure access to adequate housing and food for asylum seekers.

Health-care system

19. The Committee is concerned that the proportion of gross domestic product allocated to health-care expenditure is low. It is also concerned that, despite the reforms implemented in the health system, there are many remaining problems that adversely affect the enjoyment of the right to health care by the population. The problems include high health-care costs, informal payments demanded of patients, the inadequate infrastructure of the primary health-care system, outdated medical equipment, the quality and availability of health-care services, especially in rural areas and for disadvantaged and marginalized individuals and groups, the shortage of certain drugs and the drop in vaccination coverage (art. 12).

The Committee recommends that the State party:

(a) Progressively increase health-care expenditure as a proportion of gross domestic product with a view to giving practical expression to its obligation to fulfil the right to health under the Covenant and the State party's Constitution;

(b) Take measures to further improve the infrastructure of the primary health-care system, including dental care;

(c) Take specific measures to address the problems of high health-care costs, the shortage of certain drugs and the limited availability of health-care services, especially in rural areas, in order to ensure de facto access to affordable, good quality and timely health care and medical treatment for all segments of the population, including disadvantaged and marginalized individuals and groups;

(d) Reverse the current negative trend in vaccination coverage.

Mortality rates

20. The Committee is concerned that, despite the progress made in reducing the infant, child and maternal mortality rates, they remain high (art. 12).

The Committee recommends that the State party step up its efforts with a view to further reducing the high rates of infant, child and maternal mortality, including by improving the quality, availability and accessibility of medical assistance throughout the country.

Access to emergency medical care for asylum seekers

21. The Committee is concerned that asylum seekers do not have access to free emergency medical care and can rarely afford the high costs of such care (arts. 2, para. 2, and 12).

The Committee recommends that the State party take all the necessary measures to guarantee that asylum seekers have full access to free emergency medical care.

HIV/AIDS

22. The Committee is concerned that, despite the progress made in preventing and combating HIV/AIDS, the prevalence of HIV remains high owing to the limited coverage of adequate testing, periodic shortages of antiretroviral (ARV) drugs, the lack of laboratory monitoring and low antiretroviral therapy (ART) coverage (47 per cent in 2012). The

Committee notes the commitment of the State party to increase ART coverage to 80 per cent by the end of 2018 (art. 12).

The State party should continue its efforts to prevent and combat HIV/AIDS, including through the effective implementation of the National AIDS Programme 2014–2018, inter alia by:

(a) Enhancing its national preventive strategy, including its awareness-raising activities, taking into account the spread of HIV infection beyond the original risk groups, and providing adequate funding for its prevention activities, including for needle and syringe exchange (NSE) programmes;

(b) Improving the coverage of adequate confidential testing throughout the country;

(c) Enhancing its counselling and referral services;

(d) Addressing shortages of antiretroviral drugs;

(e) Providing for access to adequate laboratory monitoring for HIV-infected persons;

(f) Progressively increasing antiretroviral therapy coverage, including by considering the introduction of generic-based antiretroviral drugs.

Tuberculosis

23. The Committee is concerned about the prevalence of tuberculosis, including multidrug-resistant tuberculosis (MDR-TB), the insufficiency of anti-tuberculosis drugs, deficient infection control activities, the low impact of detection efforts and the inadequate service delivery at the primary health-care level (art. 12).

The Committee recommends that the State party step up its efforts with a view to improving its policies and strategies for disease prevention and detection, ensuring that there is sufficient, accessible specialized tuberculosis treatment and medication and adequate service delivery for patients at the primary health-care level.

Drug use

24. The Committee is concerned about the punitive approach taken in the State party towards persons who use drugs, which results in high numbers of such persons being imprisoned. The Committee is also concerned about existing regulations which restrict access to opioid substitution therapy (OST) and needle and syringe exchange (NSE) programmes (art. 12).

The Committee recommends that the State party adopt a human rights-based approach in addressing the problem of drug use, including by:

(a) Conducting awareness-raising programmes about the serious health risks associated with drug use;

(b) Addressing discrimination against drug dependent persons;

(c) Providing appropriate health care, psychological support services and rehabilitation to such persons, including effective drug dependence treatment such as opioid substitution therapy;

(d) Allocating financial resources for the proper operation of opioid substitution therapy (OST) and needle and syringe exchange (NSE) programmes and increasing their coverage, as well as ensuring better access to such programmes in prisons.

Inclusive education for Roma

25. The Committee is concerned about the segregation of Roma children in education, the fact that schools in the Transcarpathian and Odessa regions are attended exclusively by Roma children, and the overrepresentation of Roma children in special education schools (arts. 2, para. 2, 13 and 14).

The Committee recommends that the State party address the segregation of Roma children in schools and their overrepresentation in special education schools by ensuring the effective enforcement of its anti-discrimination legislation and by raising teachers' and the general public's awareness of those laws. It further recommends that the State party adopt an inclusive approach to the education of Roma children.

Linguistic rights of national or ethnic minorities

26. The Committee notes with concern the attempted repeal of the law on the principles of State language policy, which was adopted on 3 July 2012. The Committee also notes with concern that not all the minorities that are affected are being fully consulted in the process of drafting a revised law (art. 15).

The Committee recommends that the State party ensure the meaningful and comprehensive participation of the concerned minorities in the process of drafting the new law with a view to giving expression to the linguistic diversity of the different minorities. The State party should also ensure that the revised law conforms to the relevant international and regional standards for the protection of the linguistic rights of national or ethnic minorities.

Cultural rights of Crimean Tatars

27. The Committee is concerned that, despite the measures taken to preserve and promote the language, culture, traditions and customs of Crimean Tatars, their language is on the verge of extinction (arts. 2, para. 2, and 15).

The Committee recommends that the State party, taking into account the Committee's general comment no. 21 (2009) on the right of everyone to take part in cultural life, strengthen the measures aimed at ensuring favourable conditions for Crimean Tatars to preserve, develop and promote their identity, language and culture. The Committee recommends that the State party, inter alia, provide adequate financial support to cultural organizations for their activities and create more opportunities for Crimean Tatars to promote and use their mother tongue in education and daily life.

D. Other recommendations

28. **The Committee recommends that the State party establish a statistical data collection system to assess the level of enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, including but not**

limited to Crimean Tatars, persons with disabilities, persons living with HIV/AIDS and non-citizens. In so doing, the State party should ensure due respect for the principles of confidentiality, informed consent and voluntary self-identification of persons as belonging to a particular group.

29. The Committee encourages the State party to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Committee also encourages the State party to consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the individual complaint mechanisms under various core human rights treaties which it has not yet accepted, with a view to further strengthening the protection of human rights by providing rights holders with additional opportunities to claim their rights at the international level when domestic remedies have been exhausted.

30. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among government officials, members of the Verkhovna Rada and judicial authorities, and to inform the Committee in its next periodic report on all steps taken to implement the present concluding observations. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

31. The Committee invites the State party to submit its common core document in accordance with the harmonized guidelines on a common core document (HRI/GEN/2/Rev.6, chap. I).

32. The Committee requests the State party to submit its seventh periodic report, prepared in accordance with the revised reporting guidelines of the Committee adopted in 2008 (E/C.12/2008/2), by 30 May 2019.